Hence he should be allowed to assert his rights with the other creditors, for the statute applies only to the maintenance of demands by special partners. Only one case is cited for this contention, but it seems sound and in accordance with the policy of the statutes dealing with this branch of the law. In the decision referred to the court says: "None of the evils which the legislature intended to guard against could arise from the fact that the special partner became a creditor after the dissolution of the partnership." *Hayes* v. *Heyer* (1866) 35 N. Y. 326. But if the case did come within section 37, *supra*, as the referee thought, the conclusion reached might well be the same. For, while C.'s claim arose out of a payment to the bankers made to serve his own ends, he did, nevertheless, "pay money for the partnership," inasmuch as he liquidated a portion of the firm's indebtedness. Moreover, his demand seems to come within another exception named in the section. The firm, having obtained loans by the use of the petitioner's stock, could not deny that he had lent "his name and credit as security for the partnership," for the advances were, in fact, induced by the use of his credit.

BANKRUPTCY—PREFERENCE—ATTACHMENT. A petition in involuntary bankruptcy can be filed only by creditors having provable claims. Sec. 59. As a preferred creditor may not prove his claim until he has surrendered his preference (sec. 57 g), he may not, so long as he remains a preferred creditor, file a petition. Preference is defined by section 6, as a judgment or transfer. But the true significance of these terms is to be gathered from the purpose of the inhibition, as the act itself sets it forth—that no creditor shall receive a greater proportion of his debt than other creditors in the same class. Sec. 60 a. *Pirie* v. *Trust Co.* (1901) 182 U. S. 438.

On the question of attachment the decisions rendered under the act of 1867 are unavailing, for the two acts differ materially respecting preferences, *Wilson Bros.* v. *Nelson*, 7 Am. B. R. 142; and the courts varied widely in interpreting this feature of the 1867 act. DILLON, J., *In re Scrafford* (1877) Fed. Cases, 12556, denied an attaching creditor the right to petition, because an attachment was deemed a security, and secured creditors might not petition. *In re Frost* (1874) Fed. Cases, 5134. On the other hand, DYER, J., *In re Broich* (1876) Fed. Cases, 1921, declared an attaching creditor to be an unsecured creditor.

Under the 1898 act, SEAMAN, J., *In re Burlington Malting Co.* (1901) 6 Am. B. R. 369, has decided that an attachment constitutes a preference. This decision has lately been repudiated by *In re Schenhien* (1902) 7 Am. B. R. 162. But in the latter case it was the letter rather than the spirit of the act which was regarded. An attachment was there said to be neither judgment nor transfer; hence not within the purview of sec. 60 a and 57 g. However, it cannot be doubted that were the estate distributed, to him who holds an attachment would go a greater proportion of his debt than

to the non-attaching creditors. The lien of attachment is quite as effective a security as the qualified property right in a lien or pledge created by act of the parties. Whatever the means employed, the result is to secure the attaching creditor, and it is the result rather than the means of accomplishing it which section 60 a contemplates.

An adjudication, it is said, vacates the lien of an attachment obtained within the four months' period. But that is not strictly so. An adjudication vesting title in the trustee gives him the right and power to set aside such an attachment just as he may set aside a fraudulent preference or an assignment. Until the trustee sets it aside, the creditor remains secured, retaining his lien as he would property absolutely transferred to him. The distinction is merely one of possession. Consequently, if the lien or the absolute transfer be void, the creditor must surrender to prove his claim. Moreover, even granting that an adjudication works a surrender of the lien of an attachment, still when an attachment creditor files his petition, and that petition is being investigated with a view to an adjudication, that creditor is as a matter of fact a secured creditor. Consequently, it would seem difficult to justify the extending of an advantage to a creditor secured by an attachment which is denied to a creditor otherwise secured.—L. S. L.

RIGHT OF RE-ENTRY.—The Court of Appeals in New York was recently called upon for the first time to define the term "re-entry" —to determine whether it meant simply the right to maintain an action in ejectment, or the right to recover the possession and enjoyment of a former estate for condition broken by any legal remedy. A divided bench held "re-entry" was a highly technical and narrow term which permitted of recovery by ejectment only. *Michaels* v. *Fishel* (1902) 6. 2 N. E. 425.

The court in reaching this decision lays down the doctrine that "at common law the right of re-entry, except where re-entry can be made without force, is simply the right to maintain ejectment." Further in the opinion it says "Re-entry was coeval with the common law in origin." This last statement is admirably borne out by a long line of writers on the common law, including FLETA, BRACTON and COKE, and it represents well-settled doctrine. But this fact is a most serious stumbling-block in the way of reaching the court's conclusion, for the action of ejectment was not known in the early days of the common law, but was the judicial growth of the writ of *ejectione firmæ*. Digby, Hist. Real Prop. c. v. This writ was originally used to protect the tenant or lessee against strangers, the first instance being found in the year book of 44 Ed. III, 22, 26. In 1455 it was said by CHOKE, J., in a case in Mich. 33 Hen, VI, 42, 19, that only damages could be recovered in an action on the writ of *ejectione firmæ*, but in 1499 a recovery was allowed of both the term and damages, so it is perfectly accurate to say that the action in ejectment, as such, was not established